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June 9, 2020

MEMO ENDORSED

VIA ECF

Hon. Kenneth M. Karas, D.J.
USDC - SDNY
300 Quarropas Street
White Plains, New York 10601

Re: Alves v. Affiliated, etc.; Case No. 16-CV-1593 (KMK/JCM)

Dear Judge Karas:

As you are aware, this office is counsel to Defendants.

Following the Memo Endorsement by Hon. Kenneth M. Karas of the February 25, 2020 letter by Plaintiffs' counsel ("Memo Order," a copy of which follows hereto as "Exhibit A"), the mailing and Notice period commenced on March 3, 2020. By operation of law, sixty-two days later, on May 5, 2020, that period closed (the "Period").

Since the close of the Period, Plaintiffs' counsel has continued to offer prospective Opt-in Plaintiffs, now a total now of seven (7) in untimely fashion – see ECF Document Nos. 196-199, 202, 203 and 205 – in addition to the approximately fifteen timely offerings.

Following Plaintiffs' presentation of yet another prospective Opt-in Plaintiff on May 26, 2020, Defendants wrote Plaintiffs and observed they were in violation of the Memo Order as well as the Opt-In Notice submitted and approved by your Honor ("Notice," a copy of which follows hereto as "Exhibit B"), which stated at its p. 2 that "Consent" would be filed "with the Federal Court on or before 60 days from the date this notice is sent." Defendants asked Plaintiffs to withdraw such late filings as they were in contravention of the Notice, and, Memo Order.

Having received no response, on May 28, 2020, Defendants sent a second request, whereupon Plaintiffs offered ("Response"), that

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the 60-day period is not a hard and fast deadline. See [Saleem v. Corporate Transp. Group, Ltd., 2013 U.S. Dist. LEXIS 172104, 2013 WL 6331874 (SDNY), and, Benavidez v. Piramides Mayas, Inc., 2013 U.S. Dist. LEXIS 55586, 2013 WL 1627947 (SDNY)]. Given that the delay was not substantial, and that we are in the midst of a pandemic, we will not be withdrawing them.

However, in Saleem, all facially similar Opt-in Notices as otherwise present in the instant litigation were dismissed and/or stricken (2013 U.S. Dist. LEXIS 172104, 10-14); while Benavidez was a matter in litigative default, and there was neither any argument offered, nor deference granted, to the non-responding party vis any proffered Opt-ins.

Further, that a “pandemic” indeed exists is a red herring posed to (apparently) suggest – absent the remotest of support – that by itself the very existence of COVID-19 has interfered with potential Opt-in Plaintiffs “posting” their self-addressed and pre-stamped returns to Plaintiffs; even as their counsel received and filed such Notices on ECF notwithstanding.

Given the pendency of a Rule 56 Motion, Defendants had pondered as to next step. However, when Plaintiffs’ submitted yet another potential Opt-in Plaintiff on June 4, 2020 (another 9 days later, and now fully thirty (30) days following the close of the Period), and as they’d made clear in their Response the belief that neither the Notice nor the Memo Order precluded continuing submissions of such Opt-ins, Defendants felt compelled to file this instant letter motion.

A review the ADP records, which are equally available to Plaintiffs, indicates the majority of the untimely prospective Opt-in Plaintiffs had nary an hour of arguable overtime in calendar 2015 or after, and one of whom never received any compensation from Defendants in that time at all.

WHEREFORE, Defendants’ pray the Court for an Order (1) rejecting each and every late filed Opt-in submission by the Plaintiffs, (2) directing Plaintiffs cease and desist from filing any such additional and further submissions, (3) that Plaintiffs’ limit their anticipated Motion for Summary Judgment to address only such timely filed Opt-in plaintiffs as were heretofore offered, and (4) such other and further relief as the Court may deem proper.

The Court is respectfully thanked for its favorable consideration hereof.

Plaintiffs are to respond to this letter by 6/12/20.

Respectfully submitted,

So Ordered.


8/9/20

/S

Steven Felsenfeld

cc: Daniel Stafford, Esq./Nathaniel Charney, Esq.

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